

Nextel Communications, Inc.

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May 30, 1996

Mr. William F. Caton
Acting Secretary
Office of Managing Director
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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MAY 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Docket No. 96-98

Dear Mr. Caton:

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Pursuant to paragraph 292 of the Notice Of Proposed Rule Making in the above-referenced proceeding, Nextel Communications, Inc. ("Nextel") has enclosed a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software which contains Nextel's "Reply Comments" in this proceeding. These Reply Comments were filed today along with the submission of this diskette.

The diskette contains two files, each of which is part of Nextel's Reply Comments. These files are as follows:

REPLY.COV - Cover Page

REPLY.TXT - Text

If you have any problems with this diskette or any related questions, please do not hesitate to contact me at 202-296-8111.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence R. Krevor".

Lawrence R. Krevor
Director - Government Affairs

Enclosure

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MAY 30 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

)
)
) CC Docket No. 96-98
)
)

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

DOCKET FILE COPY ORIGINAL

NEXTEL COMMUNICATIONS, INC.

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Senior Vice President -
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Dated: May 30, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OFFICE OF THE SECRETARY

In the Matter of)
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Implementation of the Local Competition) CC Docket No.96-98
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To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments in the above-captioned proceeding.^{1/} Nextel and approximately 170 other parties filed Comments in this proceeding on May 16, 1996.

In light of the short time frame Congress has provided the Commission to resolve these issues and the enormous number of comments filed herein Nextel is filing these brief Reply Comments to address only three issues which are of significant importance to Nextel and other Commercial Mobile Radio Service ("CMRS") providers as they attempt to provide new competitive services in an increasingly competitive telecommunications marketplace.

Upon review of the comments filed on May 16, 1996, Nextel asserts that nothing therein undercuts the validity of its positions that (1) the definition of a "Local Exchange Carrier" ("LEC") does not encompass any CMRS provider or service; (2) the

^{1/} Notice Of Proposed Rule Making, CC Docket No. 96-98, FCC 96-182, released April 19, 1996.

Commission is legally authorized to adopt specific national standards for implementing the provisions of Sections 251(b) and (c); and (3) the interconnection arrangements between LECs and CMRS providers are subject to the jurisdiction of the Commission pursuant to Section 332 of the Communications Act of 1934 ("the Act").

II. DISCUSSION

A. The LEC Definition in The Telecommunications Act of 1996 Does Not Encompass CMRS Services

The Commission received numerous comments in this proceeding - many of which differ on the proper implementation of Sections 251 and 252 of the Telecommunications Act of 1996 ("TCA96"). Many commenters agreed that CMRS carriers are not "LECs" and should not be subject to the requirements of Sections 251(b) or (c) of TCA96.^{2/} As Nextel stated in its Comments, the Commission should not construe Congress' definition of a "LEC" to include any CMRS carrier until such time that a CMRS carrier has become a "substitute for land line telephone exchange service for a substantial portion of the communications within [a] State."^{3/}

Only under these unlikely circumstances could a CMRS provider wield sufficient market power to be a bottleneck to the public

^{2/} See, e.g., Comments of American Personal Communications at p. 1; Vanguard Cellular Systems, Inc. at p. 20; Bell Atlantic-NYNEX Mobile, Inc. at pp. 1-5; MobileMedia Communications, Inc. at p. 6, 11; 3600 Communications Company at p. 9; and Cox Communications, Inc. at 51.

^{3/} See 47 U.S.C. Section 332(c)(3)(A), as amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312 (1993) ("Budget Act").

switched telephone network.^{4/} At that time, it would not be unreasonable to require that CMRS provider to fulfill the requirements of Section 251(c), or be subject to the requirements of Section 251(b).^{5/}

B. National Uniform Standards Are Essential To The Rapid Deployment Of New Competitive CMRS Services

Along with many of the commenters in this proceeding, Nextel continues to believe that the Commission's tentative conclusion to establish national uniform standards, explicitly outlining Section 251 interconnection rights and obligations, would facilitate the resolution of fair, equitable and efficient LEC-CMRS interconnection arrangements.^{6/} The Commission has the legal authority under both Section 251 and Section 332 of the Act to impose these national standards, and the current state of the telecommunications marketplace dictates that national uniform

^{4/} The Comments of the National Cable Television Association, Inc. and Comcast Corporation support Nextel's view on this issue in that they argue that Section 251(c) is only intended to apply to parties who have market power.

^{5/} The National Association of Regulatory Utility Commissioners ("NARUC") proposed that any CMRS carrier, whether or not it yields market power, should be regulated as a LEC if it is providing fixed local services. Comments of NARUC at p. 21. This argument, however, ignores Section 332(c)(3)(a), cited above, which governs state authority over CMRS providers, and it ignores Congress' intent to regulate CMRS providers only when they have achieved sufficient market power to become a substitute for the LEC in an area and thereby eliminate the market forces that would otherwise "regulate" their services.

^{6/} See, e.g., Comments of America's Carriers Telecommunications Association at p. 3; American Communications Services, Inc. at p. 10; Arch Communications Group, Inc. at p. 9; NextLink Communications, L.L.C. at pp. 17-18; Sprint Corporation at p. 13; and Information Technology Industry Council at p. 4.

standards will speed the deployment of new services by eliminating numerous unnecessary and repetitive regulatory hurdles.

With regard to CMRS providers in particular, the Commission must establish a uniform set of rules to govern their implementation of regional and nationwide wireless services. Without explicit federal standards to govern the rights of CMRS providers, state regulation of interconnection arrangements will not facilitate Congress' goal of rapidly deploying new wireless services and creating a competitive telecommunications marketplace.

The need for explicit national standards is demonstrated by recent actions of the Kentucky Public Service Commission ("KPSC") as it implements the state preemption provisions of Section 332 of the Act, as amended by the Budget Act.^{7/} After Congress preempted all state regulation of CMRS rates and entry, the KPSC adopted new rules that, while eliminating the pricing provisions in state tariffs, reinstated, among others, the requirements that CMRS carriers (1) file tariffs describing their wholesale and resale conditions of service, (2) obtain prior KPSC approval for construction, and (3) obtain prior KPSC approval for all transfers of control and certain financial dealings.^{8/}

This is just an example of the results that are encountered when Congress establishes new rules but the Commission does not establish uniform rules for state implementation. Rather than

^{7/} See fn. 3, *supra*.

^{8/} See In the Matter Of Inquiry into the Provision and Regulation of Cellular Mobile Telephone Service In Kentucky, Administrative Case No. 344, dated August 5, 1994.

constructing CMRS systems and offering Kentucky consumers new and enhanced wireless services, CMRS carriers will be participating in potentially long proceedings to obtain KPSC construction and tariff approval (despite the fact that states no longer have authority over these matters) or, in the alternative, challenging the "new" regulatory standards resulting in potentially longer delays. Myriad divergent rules do not increase competition in the wireless marketplace and could not have been intended by Congress in either TCA96 or the Budget Act.

C. Pursuant To Section 332, The Commission Has Jurisdiction To Enforce LEC-CMRS Interconnection Arrangements

To further ensure uniformity in the application of CMRS interconnection rights, the Commission must retain its jurisdiction over the interconnection arrangements between LECs and CMRS providers. In the Budget Act, Congress preempted state authority over CMRS rates and entry. It did not alter that preemption in TCA96. In fact, TCA96 expressly states that it "shall not be construed to modify, impair or supersede Federal law unless expressly so provided . . ."9/

At this time, many CMRS carriers are new entrants to the telecommunications marketplace. They do not control any bottleneck facilities, they operate in an increasingly competitive atmosphere vis-a-vis other CMRS providers, and they are attempting to construct multi-state and nationwide networks to further enhance their competitiveness. Congress recognized this in the Budget Act

9/ TCA96 Section 601(c).

by establishing a new regulatory structure for CMRS. To conclude now that TCA96 changes that structure not only writes into TCA96 something that Congress did not include, but it also erects new hurdles for CMRS carriers that will only slow the deployment of their new enhanced services.

Therefore, given the Commission's legal authority to preempt state regulation of LSC-CMRS interconnection arrangements and the overwhelming policy justifications for creating a uniform set of rules to govern inherently interstate CMRS services, the Commission should conclude that states have no authority over the rates, terms or conditions of CMRS interconnection arrangements.


III. CONCLUSION

The purpose of TCA96 was to "advance competition, reduce regulation in telecommunications markets and at the same time to advance and preserve universal service to all Americans." By providing a competitive -- and uniform -- regulatory framework within which CMRS providers can construct and operate new networks, the Commission will further this goal and ensure more rapid development of a competitive marketplace. For these reasons, Nextel respectfully submits that the Commission should implement

Sections 251 and 252 in a manner consistent with its Comments and
Reply Comments herein

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

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Senior Vice President -
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Dated: May 30, 1996

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 30th day of May 1996, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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Rochelle L. Pearson

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